

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6157 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BECHARBHAI SOMABHAI GOHIL

Versus

CHUNIBHAI JHAVERBHAI PATEL & ANR.

Appearance:

MR AKIL KURESHI for Petitioner

MR RA PATEL for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 26/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. Challenge is made by the petitioner to the order made by the Gujarat Revenue Tribunal in Tenancy Appeal No.954 and 955 of 1982, dated 9.4.84.

2. The respondent No.2 is the landlord of the

agricultural land comprising in Survey No.1095/2/B, admeasuring Acre 0-9 Gunthas, situated at village Anand, Taluka Anand, District Kheda, and the petitioner is the

tenant on the said land for past many years. The respondent No.2-landlord, Shri Vaghjibhai Shankarbhai and the respondent No.1, Shri Chunibhai Jhaverbhai Patel have colluded with each other and to snatch away the said land, the respondent No.1 claimed his tenancy rights over the said land and proceedings u/s.32G of the Bombay Tenancy Act, 1948, (hereinafter referred to as the Act, 1948) were commenced in the year 1971 between respondents No.1 and 2. The respondent No.1, in those proceedings, declared his unwillingness to purchase the land in question and as such, the Mamlatdar held the said sale ineffective. Thereafter the petitioner filed an application on 26.12.73 to declare him tenant and to fix the purchase price in his favour. The respondent No. 1 had also filed an application u/s.32PP of the Act, 1948, for fixing purchase price of the said land in his favour. The petitioner was declared to be the tenant of the disputed land by the Mamlatdar vide his order dated 12.6.79 and rejected the application filed by the respondent No.1. The respondent No.1, being aggrieved by the aforesaid two orders, filed Tenancy Appeals No.1363/79 and 149/81 before the Deputy Collector, Appeals. The Dy. Collector, Appeals, under its judgment and order dated 27.1.82 and 26.2.82 respectively, set aside the judgment and order of the Mamlatdar and the Mamlatdar was directed to fix the purchase price in favour of the respondent No.1 with respect to the disputed land. Against these judgments and orders of the Dy. Collector dated 21.1.82 and 26.2.82, the petitioner

filed Revision Applications No.954/82 and No.955/82 respectively before the Gujarat Revenue Tribunal. Both these Revision Applications came to be dismissed by the Tribunal under the order dated 9.4.84. Hence this Special Civil Application.

3. The learned counsel for the petitioner contended that the Tribunal has committed serious illegality in rejecting the Revision Applications of the petitioner. It has been contended that in the proceedings initiated u/s.32G of the Act, 1948, the respondent No.1 has declared his unwillingness to purchase the land in question and as such the order was passed by the Mamlatdar declaring the sale in favour of respondent No.1 ineffective. It is a case where respondents No.1 and 2 have colluded against the petitioner. The respondent No.2 has come up against the respondent No.1 in the

proceedings initiated u/s.32PP of the Act, 1948, though he was the only person looking after the land in question and not the tenant. Once the claim has been given up by the respondent No.1, there was no question of maintainability of the application u/s.32PP of the Act 1948.

4. On the other hand, the learned counsel for the respondents contended that it is not a case of any collusion in the first proceedings initiated u/s.32G of the Act 1948. The respondent No.1 has given up his right of purchase of land. The very fact that the respondent

No.1 was given a notice by the Mamlatdar establish that he was a tenant of the land in question at a relevant time. It is a different matter that at that point of time, he has not purchased the said land. In the subsequent proceedings u/s.32PP, the respondent No.2, lastly has taken a plea that the respondent No.1 was only a Vahivatkarta of the land and as such he contested his right of tenancy in the suit and therefore it cannot be said to be a case of collusion. He further contended that the petitioner has failed to produce any evidence to show that he was in possession of the land in question as a tenant on 1.4.57, the tillers day, and as such the Mamlatdar had committed serious illegality in declaring him to be a tenant of the land. The respondent No.1 on the other hand submitted documents to show and establish that he was a cultivator of the land from 1950-51 upto 1969-79 and his name appears in the column of cultivators from the year 1971 to 1973-74.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. The learned counsel for the petitioner is unable to make out a case how he claims the tenancy right on the date 1.4.57 and his possession over the said land on this date. No evidence whatsoever has been produced on record by the petitioner to establish that he was cultivator of the land in question on 1.4.57. In view of this fact, the application of the petitioner for declaring him to be

a tenant was not maintainable and the Mamlatdar had no jurisdiction to determine the sale price in his favour u/s 32G of the Act, 1948. The learned counsel for the petitioner, only on the basis of the statements made by respondent No.2 that he, the respondent No.1, was only a Vahivatkarta, submitted that the respondent No.1 has no right to file application u/s.32PP of the Act 1948. So

far as the second aspect regarding maintainability of the application filed by the respondent No.1 is concerned, I shall deal with it later on. But the petitioner can succeed only on the basis of his own case. The petitioner is claiming a right of tenancy and a right of purchase. In such case, he has to establish his right u/s.32 of the Act, 1948, for which nothing has been produced on record. The matter has come up before the Tribunal in the proceedings u/s.32G of the Act, 1948 which was there in between the respondents and the matter has been remanded back. The remand has been made for the purpose of establishing that the respondent No.1 was only a Vahivatkarta and the petitioner is unable to establish that fact. The matter has been remanded also to give opportunity to the petitioner to lead evidence to show and establish that he was cultivating the land from the time of his father. Whatever evidence which has been produced by the petitioner was of interested witnesses. Taking into consideration the evidence produced and other materials on record, the Tribunal has decided against the petitioner and I do not find any illegality in the said finding. So far as respondent No.1 is concerned, he has

a right to purchase this land because he was a tenant in the land which fact was also established and the Section 32PP gives further right to him of purchase. The appellate authority as well as the Tribunal have not committed any illegality in passing the order in favour of the respondent No.1.

7. The learned counsel for the petitioner is unable to make out any case for interference of this Court. This Court is sitting under Article 227 of the Constitution of India in the present case. The Act, 1948 is a special legislation governing the relationship of landlord and tenant and their disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decisions of the Revenue Tribunal. This Court sitting under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice. It is a case, as observed earlier, where the respondent No.1 was treated to be a tenant by none other than the Revenue officers in the year 1971, but he declined to purchase the said land. There is sufficient evidence on record also that he was cultivating the land in question. On the contrary, the petitioner is unable to make out a case that he was a tenant in the land and

that he was in possession thereof and cultivating the same on the relevant date.

8. Taking into consideration the totality of the facts of the case, no interference of this Court, sitting under Article 227 of the Constitution of India, is called for. In the result, this Special Civil Application fails and the same is dismissed. No order as to costs.

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(sunil)